



Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007

Robert R. Corbin

April 28, 1983

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Barry M. Corey
Corey & Kittle, P.C.
Attorneys at Law
Suite 509 Transamerica Bldg.
177 North Church Avenue
Tucson, AZ 85701

Re: Addendum to I81-104 (R81-111)

Dear Mr. Corey:

In Ariz. Atty. Gen. Op. I81-104, we cited a statute incorrectly. Footnote 1 of our original opinion should read as follows:

A.R.S. § 15-1102 reads in relevant part:

A. The governing board may apply the proceeds from the sale, lease or rental of school property to maintenance and operation or capital outlay under the following conditions:

* * *

6. Proceeds from the lease or rental of school property may be used for the maintenance and operation budget or the capital outlay budget and excluded from the revenue control limit or the capital outlay revenue limit indefinitely.

7. Monies received for and derived from the sale, lease or rental of school property are promptly deposited with the county treasurer who shall establish two school plant funds, one fund for monies received from the sale of school property and one fund for monies received from the lease

Mr. Barry M. Corey
April 28, 1983
Page 2

or rental of school property. The county treasurer shall credit the deposits to the respective school plant fund of the respective school district. Monies placed to the credit of the school plant funds may be expended as provided in this subsection.

The corrected text in no way changes our opinion.

We apologize for any inconvenience this may have caused you.

Sincerely,



BOB CORBIN
Attorney General

BC:VBW:lm



E. J. King
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

October 6, 1981

Mr. Barry M. Corey
Corey & Kittle, P.C.
Attorneys at Law
Suite 509 Transamerica Bldg.
177 North Church Avenue
Tucson, Arizona 85701

Re: I81-104 (R81-111)

Dear Mr. Corey:

We are writing in response to your opinion dated July 24, 1981, to an Associate to the Superintendent of the Amphitheater public schools addressing several issues based on the following fact situation: The Amphitheater School District Board wishes to lease school property to a nonprofit corporation without charge or for \$1.00; the nonprofit corporation would then lease or sublease the school property at its fair market value to one or more third parties; the lease proceeds would be used by the nonprofit corporation to operate a community school program for which the nonprofit corporation would be responsible; the members of the Amphitheater School Board and the members of the Board of Directors of the nonprofit corporation would be identical. The following is a revision of that opinion.

The first question was whether a lease under the circumstances described above is permissible. We think this arrangement would be impermissible.

The statutory requirement that monies generated from the lease or rental of school property be placed in specified funds, pursuant to A.R.S. § 15-1102,¹ would be circumvented

1. A.R.S. § 15-1102 reads in relevant part:

A. The governing board may apply the proceeds from the sale, lease or rental of school property to maintenance and (cont'd. on page 2)

Mr. Barry M. Corey
October 6, 1981
Page 2

by allowing the nonprofit corporation to lease school property and dispose of the proceeds. The nonprofit corporation would not be bound by the requirements of Title 15. Money that would otherwise be required to be deposited in a particular school account to be used only for statutorily authorized purposes could be used for any purpose, including purposes not otherwise permissible, such as the general operation of a community school program, as is apparently contemplated in the situation at hand.^{2/} Moreover, using a nonprofit corporate intermediary circumvents the constitutional and statutory requirements imposed on a school board and its members, such as the duty to make decisions at a public meeting, lease property at its fair market value unless otherwise permitted, and act in the public interest. Because a school board may not indirectly do that which it is prohibited from doing directly, we think a nonprofit corporation that leases or rents school property and operates a community school program does not qualify under A.R.S. § 15-1105.B to lease such school property from the

1. (cont'd. from page 1) operation under the following conditions:

* * *

5. Proceeds from the lease or rental of school property may be used indefinitely for the maintenance and operation budget, except that after the three to five year period as provided in this subsection the revenues shall be included in the revenue control limit.

6. Monies received for and derived from the sale, lease or rental of school property shall be promptly deposited with the county treasurer who shall establish and credit the deposits to the school plant fund of the respective school district. Monies placed to the credit of the school plant fund may be expended as provided in this subsection

2. Money placed in a school plant fund may not be used to pay for community school programs with the exception of budgeting and expending from the maintenance and operation section of the budget to employ a qualified director of the community school program. See A.R.S. §§ 15-1102.A.6 and 15-1142.2.

Mr. Barry M. Corey
October 6, 1981
Page 3

school board for \$1.00 or without charge.^{3/} Inasmuch as we reach this conclusion, the other issues concerning for what value the nonprofit corporation may sublease school property and for what purposes the lease proceeds may be used need not be addressed.

Sincerely,



BOB CORBIN
Attorney General

BC/LS/ta

3. We note also, a school may lease school property without charge only to a school related group or an organization whose membership is open to the public and whose activities promote the educational function of the school district, as determined in good faith by the school district's governing board, pursuant to A.R.S. § 15-1105.B. We think the Legislature contemplated use of property without charge by groups such as a Parent-Teacher Association. Because it appears that the primary reason for the existence of the nonprofit entity is to circumvent the requirement that sums received for leasing school property be deposited in the school plant fund, the nonprofit corporation, is not a school-related group or organization for purposes of A.R.S. § 15-1105.B. Similarly, the nonprofit corporation does not qualify for use of school property for a "reasonable use fee," pursuant to A.R.S. § 15-1105.A, inasmuch as the purpose of the corporation is to sublease school property, which is not a "civic purpose" required by statute.

COREY & KITTLE, P.C.

ATTORNEYS AT LAW

BARRY M. COREY
JAY S. KITTLE
PATRICK J. FARRELL
ALLAN D. BOGUTZ

SUITE 509 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 882-4994

July 24, 1981

Mr. Alfred C. Strachan
Associate to Superintendent
Staff Relations
Amphitheater Public Schools
125 East Prince Road
Tucson, Arizona 85705

EDUCATION OPINION

ISSUE NO LATER THAN

9-27-81

7-29-81 *pc*
LOWE
R81- 111

Re: Community Schools Leases

Dear Mr. Strachan:

From our various communications regarding Amphitheater Community Schools, Inc., I understand that the following facts exist:

Amphitheater Community Schools, Inc., hereafter referred to as the "corporation", is a non-profit corporation existing pursuant to and by virtue of the laws of the State of Arizona. It is a corporation the sole function of which is to operate a community school program pursuant to Section 15-1141 through 1143 of the Arizona Revised Statutes. The Board of Directors of the corporation consists of the members of the Governing Board of Education of Amphitheater School District. The members of the governing board and the Board of Directors wish to permit the corporation to lease or otherwise utilize various real properties of Amphitheater School District, and to be permitted to lease the properties so acquired to one or more third parties upon terms acceptable to the third party and the corporation, including a rental fee which would adequately compensate the corporation for the fair rental value of the properties so leased.

The questions you have raised with regard to these possible transactions are as follows:

1. May the Amphitheater School District lease real property to the corporation for the sum of One (\$1.00) Dollar or permit the uncompensated use of said property; and
2. May the corporation lease the real properties so acquired to one or more third parties for a consideration which would reflect the actual value of the use of the property; and
3. May the rental proceeds so generated by the corporation be utilized for the operation of the community school program.

The answer to each of the questions so posed, in my opinion, is in the affirmative.

Mr. Alfred C. Strachan
July 24, 1981
Page Two

Section 15-1141 et seq of the Arizona Revised Statutes provides for the establishment of a community school program. Although the statutes do not specifically require the establishment of an independent corporation, there is no apparent prohibition of such a format.

The first question to be addressed is whether Amphitheater Public School District can lawfully lease or otherwise permit the use of its school property by the corporation. This question must be resolved in light of the authority which is specifically granted by statute and in light of existing case law. The Arizona courts have held on numerous occasions that school boards have only the authority specifically granted by statute and that the members of the Governing Board must act for and in the public interest. See School District No. One of Pima County vs. Lohr, 17 App. 438, 498 P.2nd 512 (1972). The Arizona Revised Statutes do not specifically state that a school district may lease its property to another. However, Section 15-341(8) of the Arizona Revised Statutes does provide authority to the Governing Board to "rent, furnish, repair and insure the school property of the district". Although the use of the word "rent" creates some ambiguity in this setting, if construed in the light of another statutory provision, as hereinafter set forth, it becomes clear that the school district is, in fact, authorized to lease its property to others. Sections 15-1102 of the Arizona Revised Statutes provides, at Paragraph A, that the "Governing Board may apply the proceeds from the sale, lease, or rental of school property..." in the manner thereafter specified. This provision, while not giving specific authority to enter into such leasing agreements, specifically acknowledges that there may be proceeds from such lease agreements. Thus, it is my conclusion that the school district is lawfully authorized to lease its property.

Additionally, Section 15-1105(B) of the Arizona Revised Statutes provides as follows:

"The Governing Board may permit the uncompensated use of school buildings, grounds, buses, equipment and other school property by any school related group...."

Although this particular provision is found under the caption "Civic Center School Funds; investment of monies; reversion to school plant fund", the Arizona Revised Statutes are clear to the effect that "headings to sections... are supplied for the purpose of convenient reference and do not constitute part of the law." (See A.R.S. Section 1-212). Thus, since the corporation is a corporation which is "school related", it is my opinion that the Governing Board of

Mr. Alfred C. Strachan
July 24, 1981
Page Three

Amphitheater Public Schools may lawfully either lease or permit the uncompensated use of its property by the corporation.

This conclusion is not inconsistent with the case of Prescott Community Hospital Commission vs. Prescott School District, 57 Ariz. 492, 115 P.2d 160 (1941). That case held that a school district acted beyond the scope of its authority when it leased school property to a hospital for the sum of One (\$1.00) Dollar per year. The theory of this case was that "school districts are created by the State for the sole purpose of promoting the education of the youth of the state. All their powers are given them and all the property which they own is held by them in trust for the same purpose, and any contract of any nature which they may enter into, which shows on its face that it is not meant for the educational advancement of the youth of the district but for some other purpose, no matter how worthy in its nature, is ultra vires and void." In the Prescott Community Hospital case, the school district was leasing its property for purposes which were not educational, and leased the property under terms which constituted a gift of public funds. Neither of these was permissible under statutory constraints then in existence.

The current statutory authority, however, specifically provides for the uncompensated use of school property by school related groups. Thus, it is my conclusion that the Amphitheater School District may lawfully lease to or permit the uncompensated use of its property by the corporation.

The second question presented is whether, assuming a valid possessory right in the property, the corporation may lawfully lease its property to a third party for purposes which would not constitute school uses or other uses specified under Section 15-1105(A) of the Arizona Revised Statutes (recreational, educational, political, economic, artistic, moral, scientific, social or other civic purposes in the interest of the community). As previously set forth, the Board of Directors of the corporation and the members of the Governing Board of Amphitheater Public Schools are identical. The Governing Board of the school district is empowered to "establish and operate a community school program", and the Governing Board of Amphitheater Public Schools has exercised that power by the establishment of the corporation. Since the corporation has come into existence by reason of the Governing Board's exercise of its powers, the powers of the corporation are neither greater nor less than the powers which the Governing Board would have had absent the establishment of such corporation. Accordingly, the powers of the corporation should be construed as being

Mr. Alfred C. Strachan
July 24, 1981
Page Four

the same as those powers which could have been exercised by the Governing Board of Amphitheater Public School District.

As previously set forth, under Section 15-341(8), and 15-1102 of the Arizona Revised Statutes, the Governing Board of the school district has the power to enter into agreements for the lease of its property. Accordingly, the corporation, too, has and should have the same power

Unlike the transaction between the school district and the corporation, however, a transaction between the corporation and a third party would have to satisfy the constraints set forth in Prescott Community Hospital Commission vs. Prescott School District; i.e. any lease agreement entered into between Amphitheater Community Schools, Inc. and any third party which does not constitute a school related group, or a group serving the recreational, educational, political, economic, artistic, moral, scientific, social, or other civic purpose in the interest of the community, would have to be an "arm's length" transaction, involving a rental fee at the fair market value of the property being leased. If these conditions are met, it is my opinion that the corporation may lawfully lease property in which it has a valid possessory interest to a third party.

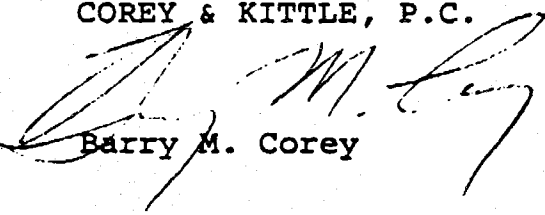
The purpose for which the proceeds from the leasing of property may be utilized must be determined by the applicable statutes. Section 15-1143 of the Arizona Revised Statute provides that "monies deposited in a community school fund of a school district may be used for community school programs only and are not subject to reversion except upon termination of a community school program." The language utilized in A.R.S. Section 15-1143 is not the same language which is utilized in A.R.S. Section 15-1141 which refers to "community school monies". A.R.S. Section 15-1143 refers to "monies" without the restrictive language. It is doubtful whether rents constituting the proceeds from a lease agreement would constitute "community school monies" as defined in Section 15-1141. However, the use of the word "monies", without the adjective "community school", leads to the conclusion that any monies deposited in the community school fund will receive the treatment proscribed in A.R.S. Section 15-1143. Accordingly, it appears that the proceeds from the leasing of the community school properties would be subject to the requirements set forth in A.R.S. Section 15-1143, and that those proceeds may lawfully be used for community schools activities

Mr. Alfred C. Strachan
July 24, 1981
Page Five

I will be pleased to discuss any of the matters herein
set forth with you or any member of the Governing Board at any
convenient time.

Very truly yours,

COREY & KITTLE, P.C.



Barry M. Corey

BMC:emr